

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 25

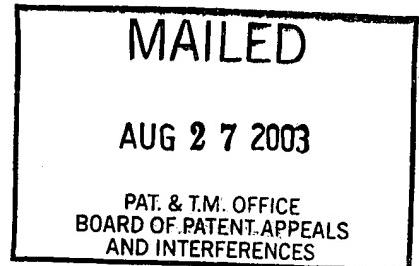
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte GRAHAM B. MCCLOY

Appeal No. 2003-0756
Application No. 09/495,105

ON BRIEF



Before ABRAMS, STAAB and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 25-34 and 41-59. The examiner withdrew the rejection of claims 33 and 34 in the answer (Paper No. 16 - see page 6). Claims 33 and 34 now stand objected to as being dependent upon a rejected claim (answer, page 14). Thus, only claims 25-32 and 41-59 are involved in this appeal.

We AFFIRM.

BACKGROUND

The appellant's invention relates to exterior motor vehicle mirror assemblies which incorporate auxiliary lighting provided from a bezel section formed in a lower portion of the mirror assembly (specification, page 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief. The examiner's statement on page 3 of the answer that "[t]he copy of the appealed claims contained in the Appendix to the brief is correct," however, is not accurate. Specifically, we have noted the following errors in the reproductions of independent claims 41, 55, 58 and 59. In claim 41 as reproduced in the Appendix, line 8, "formed" should read "forming." In claim 55 as reproduced in the Appendix , line 7, "formed" should read "forming." In claim 58 as reproduced in the Appendix, line 10, "position" should read "positioned." In claim 59 as reproduced in the Appendix, lines 8 and 9, "and defining a portion of a lower transverse surface of the mirror housing" has been repeated in error.

The examiner relied solely upon the following prior art reference in rejecting the appealed claims:¹

Pastrick et al. (Pastrick) 5,823,654 Oct. 20, 1998

¹ The examiner has withdrawn the rejections based on the other three prior art references applied in the final rejection (Paper No. 10). Thus, the examiner's additional listing of U.S. Patent Nos. 5,669,704, 5,497,306 [sic, 5,497,305] and 4,809,137 on page 3 of the answer is misleading.

The sole rejection before us for review is as follows:

Claims 25-32 and 41-59 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Pastrick.²

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer for the examiner's complete reasoning in support of the rejection and to the brief and reply brief (Paper Nos. 16 and 18) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied Pastrick reference, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Pastrick (Figures 21-24 and column 9, line 20, et seq.) discloses an exterior mirror assembly 26' with a housing 34' and cowling 106. The mirror housing includes an opening 108 for receiving a light module 104. The light module 104 includes an enclosure 116 having a generally downwardly directed light transmitting opening 122 and an opening 121 for receiving a light socket 124 in a cavity 134 providing connection to a light source 126. Light transmitting opening 122 is covered by a cover member 130 which is a lens member. A reflector 132 surrounds the light source 126. The reflector

² It is apparent from the examiner's remarks on pages 6 and 14 of the answer that the examiner's inclusion of claim 34 in this rejection on page 3 of the answer was in error.

132 is aluminum or high efficiency aluminum vacuum-deposited on a wall 133. Alternatively, wall 133 may be coated with a white paint or a silver paint. A signal light assembly 138 is provided in a second cavity 140 and includes a plurality of light emitting diodes 152. A lens assembly 154, which may include an optical surface 156, is positioned over the signal light assembly 138 and a cover member 160 encloses the signal light assembly and optical surface 156. The enclosure 116 is opaque, except for the cover members 130 and 160, in order to shade light (column 12, lines 29-31).

All of appellant's arguments, in both the brief and reply brief, as to why the claims are not anticipated by Pastrick, appear to stem from appellant's observation that Pastrick's light module 104 is contained within a recess of the mirror housing (housing 34' and cowling 106) such that no portion of the light module 104 extends below the lowermost portion of the mirror housing. The claims, however, do not require that any portion of the bezel extend below the lowermost portion of the mirror housing, that is, that no portion of the mirror housing extend as far down as the lowermost portion of the bezel. For the reasons discussed infra, the limitations of the independent claims pertaining to the relationship between the bezel and the mirror housing are met by Pastrick.

We turn first to independent claim 25, which recites "a portion of the bezel including an opaque contoured surface portion extending from the lower portion of the mirror housing." The wall 133 of Pastrick's light module 104 is an opaque contoured

surface and it extends from a lower portion (the lower surface of the cowling 106 forming the upper extent of recess 110) of the mirror housing.

Independent claim 41 requires a bezel having a height for extending below a lower transverse surface of the housing, the bezel forming a contoured surface from the lower portion (i.e., apparently the lower transverse surface) of the mirror housing. The signal light assembly portion 138 of Pastrick's light module 104 extends below the lower transverse surface of the cowling 106 forming the upper extent of recess 110 and includes a cover member 160 which forms a contoured surface from the said lower transverse surface.

Claim 54 calls for a bezel having a height for extending below the housing, a portion of the bezel including an opaque portion being contoured for forming a lower contoured portion of the mirror contoured surface portion³ extending from the lower portion of the mirror housing. While the lower surfaces of Pastrick's light module 104 are formed by transparent covers 130 and 160, the remainder of the enclosure 116 is opaque. The portion of the enclosure that extends rearwardly from wall 133 which receives the cover 160 is an opaque portion which conforms to the lower surface of the mirror 28 and its surrounding cowling and extends from the lower portion (the surface of the cowling 106 forming the upper extent of the recess 110) of the mirror housing.

³ The language "the mirror contoured surface portion" lacks antecedent basis in claim 54.

Claim 55⁴ calls for an independent light emitting portion having a height for extending below the housing and contoured for forming a contoured lower surface abutting to and continuing the contour of the housing, a portion of the bezel including an opaque portion for preventing passage of light therethrough. As discussed above, the enclosure 116, except for the cover members 130 and 160, is opaque for shading light. Further, the cover members 130 and 160 of the light module 104 are contoured for forming a contoured lower surface abutting to and continuing the contour of the mirror housing. Moreover, the light module 104 extends below the lower portion of the housing (the lower surface of the cowling 106 forming the upper extent of the recess 110). We see no requirement in claim 55 that the entirety of the light emitting portion extend below the entirety of the housing.

Claim 56 calls for a signal attachment having a height for extending below a bottom portion of the housing and an opening in a portion of the attachment forming a contoured surface immediately adjacent and continuing the contoured surface of the contoured back surface of the housing. As discussed above, Pastrick's light module 104 extends below the mirror housing in the region of the recess 110. Further, the light module 104 includes an opening 122 covered by a cover 130 which continues the contoured back surface of the housing 34".

⁴ The term "bezel" in line as reproduced in the Appendix, lacks antecedent basis in claim 55.

We turn our attention next to claim 57, which calls for a signal attachment member defining a contoured portion⁵ of a lower surface of the mirror housing, the attachment member having a height for extending below a downwardly extending peripheral wall of the housing and including an upwardly extending contoured surface portion for mating with the downwardly extending wall of the housing. The cover member 160 forms such an upwardly extending contoured surface which mates with the downwardly extending rear face of the cowling 106.

With respect to claim 58, appellant (reply brief, pages 13-14) argues that, because Pastrick's light module is to be received within the mirror housing, there is no possible way the bezel portion (light module 104) can extend below the mirror housing, because the bezel portion, once inserted into the housing, is flush with the lower surface of the mirror housing. We note that claim 58 does not require that the bezel portion extend below the entirety of the mirror housing. Rather, claim 58 simply requires a bezel attached to and extending below a lower wall portion of the housing. As discussed above, the portion of the bezel containing the signal light assembly 138 extends below the wall portion of the cowling 106 forming the upper extent of the recess 110.

We turn finally to claim 59, which recites a bezel defining a portion of a lower transverse surface of the mirror housing, the bezel having a height for extending below

⁵ The term "option" in claim 57 should apparently be "portion."

a downwardly extending peripheral wall of the housing and including an upwardly extending wall portion for mating with the downwardly extending wall of the housing. As discussed above, Pastrick's light module 104 includes a portion housing the signal light assembly 138 which extends below the downwardly extending rear face of the cowling 106 in the vicinity of the recess 110 and includes an upwardly extending wall portion (cover member 160) for mating with the downwardly extending rear face of the cowling 106.

For the foregoing reasons, appellant's arguments do not persuade us that appellant's independent claims 25, 41 and 54-59 are not anticipated⁶ by Pastrick. Accordingly, we shall sustain the examiner's rejection of these claims. As appellant has not offered any arguments as to why the dependent claims are separately patentable⁷, we shall sustain the rejection of claims 26-32 and 42-53 as well.

CONCLUSION

To summarize, the decision of the examiner to reject claims 25-32 and 41-59 under 35 U.S.C. § 102(b) is affirmed.

⁶ Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In other words, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. Kalman v. Kimberly Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

⁷ As provided in 37 CFR § 1.192(c)(7), “[m]erely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.”

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

NEAL E. ABRAMS
Administrative Patent Judge

LAWRENCE J. STAAB
Administrative Patent Judge

Jennifer D. Bahr
JENNIFER D. BAHR
Administrative Patent Judge

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